

DECIDED
6 February 2020

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- [1] These are five appeals from members of the same family, who are all citizens of Nigeria. They consist of two adults, XXXX XXXX XXXX (the Principal Appellant) and his spouse, XXXX XXXX XXXX, as well as their three children who are all minors: XXXX XXXX XXXX XXXX XXXX XXXX XXXX and XXXX XXXX XXXX XXXX.
- [2] The Principal Appellant alleged that he and the other members of his family were in danger of being killed by members of a criminal organization known as Black Axe. He claimed that members of that organization tried to kill him on several occasions in 2017. Also, they reported him to the state security agency as being a sympathizer of an organization that was on a security watch list, which led to his being investigated by that agency.
- [3] The Refugee Protection Division (RPD) found that the Principal Appellant was not credible. It also determined that the Appellants have a viable Internal Flight Alternative (IFA) in both Abuja and Port Harcourt.
- [4] The Appellants dispute the RPD's credibility finding as well as its conclusion on IFA, asserting that Black Axe is present throughout Nigeria and has both the means and willingness to locate them in the two selected IFAs.

- [5] I find that the determinative issue is the Principal Appellant's credibility. There are significant contradictions in his evidence, which establish that his testimony was not truthful. The evidence does not show that the Principal Appellant was ever attacked by Black Axe. Furthermore, he was never the subject of investigation by the Nigerian security agency and therefore does not face a serious possibility of persecution for a perceived political opinion. The appeals are therefore dismissed.

BACKGROUND

- [6] The Principal Appellant was a XXXX, who practiced in Oweri, a city located in Imo State, in southeastern Nigeria. One of XXXX XXXX was a landlord, on whose behalf he sought and obtained an eviction order against a tenant who had accumulated significant rent arrears and caused disturbances. The Principal Appellant attended at the rental unit on the day that bailiffs enforced the eviction order, in XXXX 2017. According to his evidence, the tenant became angry and tried to assault him. He also threatened to kill him. The tenant was arrested and detained but eventually released on bail. He then disappeared and was never heard from again. The Principal Appellant claimed that he subsequently learned that the tenant in question was a member of a criminal organization known as Black Axe.
- [7] Two months later, in XXXX 2017, while travelling to his mother's village, the Principal Appellant was attacked by a group of armed masked men, whom he suspected of being members of Black Axe because they wore black t-shirts and black caps. They shouted his name and started shooting indiscriminately while trying to enter his family's compound. He was able to escape without injury. However, the disturbance caused his mother to suffer a fatal heart attack.
- [8] On XXXX XXXX XXXX 2017, the Principal Appellant was once again attacked by Black Axe members, this time sustaining a machete cut to his head, for which he was hospitalized. He then went to live with his sister in Lagos State.
- [9] On XXXX XXXX XXXX Black Axe members found him. They were in a car and started shooting their firearms in his direction. However, he was able to hide in the gutter.
- [10] That is when the Principal Appellant made the decision to leave Nigeria, fearing that his life was in danger. He was able to secure visitor visas to the United States for himself and the other Appellants. They travelled to the United States on XXXX XXXX XXXX 2018 and entered Canada the following day.
- [11] Shortly before the date of the RPD's hearing, the Principal Appellant amended his Basis of Claim form (BOC). He provided another reason why he feared returning to Nigeria. In XXXX XXXX XXXX 2018, two weeks before he left Nigeria, he was contacted by the tenant whom he had evicted the previous year. The tenant warned him that Black Axe had reported him to the Department of State Security Services (DSSS), as being a sympathizer of an organization that was on a security watch list, namely, the Indigenous People of Biafra (IPOB). A letter from the Principal Appellant's brother-in-law indicates that he was present when DSSS

agents burst into the Principal Appellant's apartment at 4:15 AM on XXXX XXXX. The Principal Appellant was away at the time. They proceeded to ransack the apartment and told the brother-in-law that the Principal Appellant was required to report to them immediately¹. Later that day, the DSSS reached the Principal Appellant by telephone and instructed him to come to their office, failing which he would be arrested. An appointment was set for XXXX XXXX, the day that the Principal Appellant and his family left the country. The Appellant did not show up for his appointment.

- [12] The RPD found that none of the Appellant's allegations were credible². The delay in putting forward the allegation about the DSSS investigation was considered to be unjustified. The RPD also found it unlikely that Black Axe had targeted the Principal Appellant personally or that the tenant who had threatened him was a member of that criminal organization. In any event, the Appellants had a viable IFA in both Abuja and Port Harcourt as Black Axe did not have a significant presence in either location.
- [13] The Appellants dispute the RPD's credibility findings³. They argue that the allegation about the DSSS investigating the Principal Appellant does not contradict or significantly alter the allegations initially contained in his BOC. They are also critical of the RPD for failing to assess the Principal Appellant's profile as a perceived member of IPOB. As for the finding that the Principal Appellant failed to establish that the tenant was associated with Black Axe, the Appellants contend that they could not do so because relevant documents in that regard had been seized by the Canadian Border Services Agency (CBSA) and not returned to them at the time of the RPD proceedings. Now that they have been able to retrieve some of these documents, they seek to introduce them as new evidence on appeal. Lastly, the Appellants dispute the RPD's findings with respect to IFA. They argue that documentary evidence which is found in the National Documentation Package for Nigeria⁴, as well as in news accounts which they seek to introduce as new evidence, show that Black Axe has a significant presence throughout Nigeria.
- [14] The new evidence which the Appellants have presented as part of their appeal consist of the following documents: * Documents seized by CBSA when the Principal Appellant entered Canada, which were returned to him only two days after the RPD's hearing. These are: Confirmation of his professional and educational qualifications; A medical certificate from XXXX Hospital confirming that he was the victim of an attack on XXXX XXXX XXXX 2017; and court documents pertaining to the eviction order sought against the tenant. * Articles published in Nigeria Newspoint on May 6 and 10, 2019 which discuss the presence of Black Axe in Port Harcourt. * An affidavit prepared on XXXX XXXX XXXX 2019 by XXXX XXXX XXXX, a XXXX who worked in the same XXXX XXXX as the Principal Appellant, in which he claims to have informed him on XXXX XXXX XXXX 2019 that the DSSS agents had come to the office seven times in 2018 and 2019 and stated that they were looking for him. * An affidavit prepared on XXXX XXXX XXXX 2019 by XXXX XXXX XXXX, stating that he was living in the same neighbourhood as the tenant who threatened the Principal Appellant and whom he described as a "dreaded cult kingpin" associated with Black Axe. He also states that

the tenant called him after his eviction and threatened to deal with him as he held him to be responsible for his eviction. On XXXX XXXX XXXX 2018, he was kidnapped by Black Axe. The tenant came to the location where he was being held and threatened to kill him. He was released after a ransom was paid. * An extract from a crime diary of the Nigerian Police dated XXXX XXXX XXXX 2019 which indicates that XXXX XXXX XXXX reported the above incident to them on that day. * Newspaper articles published in 2015 and 2019 which address the level of influence of Black Axe in Nigeria and Canada. DETERMINATIVE ISSUE

- [15] I find that the determinative issue in this appeal is the Principal Appellant's credibility in respect of the two following issues: * That Black Axe was responsible for the three attacks against him, in XXXX XXXX XXXX and XXXX XXXX 2017; * That the DSSS has been investigating him with regard to his association with IPOB. SCOPE OF THE APPEAL
- [16] The Refugee Appeal Division (RAD) reviews decisions of the RPD on a standard of correctness after conducting an independent assessment of the evidence before it.⁵ The exception to this rule is that the RAD may apply a deferential standard in some circumstances. ⁶ I have conducted my own independent assessment of all of the evidence in this case, including listening to the audio recording of the RPD's hearing in its entirety. I have exclusively applied a correctness standard in this case. ADMISSIBILITY OF THE NEW EVIDENCE
- [17] Evidence can only be introduced on appeal if it is truly new or could not reasonably have been available to the Appellant before the RPD's decision was issued⁷. Furthermore, the new evidence must be both credible and relevant.⁸ It can only be relevant if it has a bearing on the determinative issue in this appeal, which is the credibility of the Principal Appellant.
- [18] On the basis of these criteria, I find that the press articles are not admissible on appeal. They pertain only to the issue of IFA, which is not the determinative issue in this appeal.
- [19] Similarly, the documents returned by CBSA are inadmissible because they pertain neither to the matter of whether the Principal Appellant was targeted by Black Axe, nor to the matter of whether he was being investigated by the DSSS.
- [20] Insofar as concerns the affidavit of XXXX XXXX XXXX 2019 by XXXX XXXX XXXX, I find that this evidence is not credible, given the circumstances under which it was prepared. Considering the close working relationship between this individual and the Principal Appellant, it is not plausible that he would have failed to inform him earlier that DSSS agents had come to the office seven times over the past year and were looking for him. As this evidence is not credible, it is not admissible on appeal.
- [21] I also find inadmissible, for lack of credibility, the affidavit of XXXX XXXX XXXX 2019 by XXXX XXXX XXXX and the extract from a crime diary of the Nigerian Police dated XXXX XXXX XXXX 2019. These are documents which were prepared after the Appellants became aware of the RPD's decision, which renders their timing highly suspicious. In particular, I find it peculiar that XXXX XXXX XXXX would have waited five months after his alleged

kidnapping by Black Axe before informing police. Clearly, this document was prepared for the specific purpose of bolstering the Principal Appellant's case before the RAD.

ANALYSIS

- [22] I do not find it necessary to address the RPD's findings on IFA as I am satisfied that it was correct in concluding that the Principal Appellant's testimony was not credible. I agree with the RPD that the Principal Appellant did not provide a satisfactory explanation in laying the blame on his lawyer for the delay in amending his BOC. I also agree with the RPD that the Principal Appellant has not provided credible evidence that he was the subject of targeted attacks on three separate occasions in 2017 that were attributable to Black Axe. The allegation that the Principal Appellant is under investigation by the DSSS
- [23] Given the seriousness of the allegation of being the subject of a security investigation by a government agency, it is inconceivable that the Principal Appellant, who is a XXXX, would have failed to mention it when he first completed his BOC, if that allegation were true. Even assuming that this was a mere oversight on his part, he would have wanted to amend his BOC without delay, rather than wait almost one year. To be clear, this new allegation had the effect of transforming the very nature of the asylum claim put forward. Instead of it being merely a request by the Appellants to be recognized as a person in need of protection, pursuant to section 97 of the Immigration and Refugee Protection Act (the Act), into a claim, it now included a request to be recognized as a refugee pursuant to section 96 of the Act, which could be established on the basis of a lower standard of proof than the balance of probabilities.
- [24] Furthermore, the credibility of the amendment is impugned by the fact that it directly contradicts a statement found in the initial BOC. Previously, the Principal Appellant had claimed that the tenant who threatened to kill him in XXXX 2017, and subsequently been arrested because of that threat, had since vanished. Specifically, he wrote: "Before I could come the following day, the police had already granted him bail without surety. After the bail he absconded and has not been found until I left Nigeria" [emphasis added]. However, at paragraph 29 of the amended BOC, the Principal Appellant wrote that the tenant contacted him again in XXXX 2018.
- [25] I have considered the letter from XXXX XXXX, the Principal Appellant's brother-in-law, which claims a visit by the DSSS to the Appellants' home in the middle of the night on XXXX XXXX XXXX 2018. I note that this letter was only prepared on XXXX XXXX XXXX 2019, shortly before the Principal Appellant amended his BOC. I do not find that this letter is credible, given how long it took before it was prepared. The allegation concerning Black Axe
- [26] I find that the evidence does not support the Principal Appellant's contention that he was the subject of a targeted attack by Black Axe in XXXX 2017. The Principal Appellant acknowledged in his evidence that he did not report this incident to the police, claiming that he was afraid to do so in person. However, he also claimed that his brother filed a police

report. While this appears to be true, according to the extract of the police diary which the Appellants filed into evidence, it was not until 17 months after the incident that the Principal Appellant's brother went to the police⁹. By then, the Appellants had long since arrived in Canada and filed their asylum claims. The significant delay in reporting the incident to the police suggests to me that this action was only taken for the purpose of buttressing the Appellants' allegation. If the allegation were true, the Principal Appellant's brother would not have waited as long as he did before going to the police.

[27] Insofar as concerns the two alleged attacks in XXXX and XXXX 2017, I note that there is no indication in the evidence that the Principal Appellant reported these incidents to the police, which seems peculiar, given the seriousness of what happened. There is no basis in the evidence either to find that Black Axe was behind these two attacks or that they were linked to the eviction of the tenant in XXXX 2017.

[28] I have also considered the affidavit of XXXX XXXX XXXX XXXX XXXX¹⁰, who identified himself as a XXXX XXXX acquainted with the Principal Appellant and claiming to have been aware of what he described as his "ordeal". He provides very general information only about what was the nature of that ordeal, limiting himself to describing as "an ugly experience" and referring only to attempts by a terrorist group to eliminate him, never once mentioning Black Axe specifically or describing precisely what happened to the Principal Appellant. Under the circumstances, I do not consider that this affidavit bolsters the Principal Appellant's contention that his life would be in danger if he returned to Nigeria.

CONCLUSION

[29] The Principal Appellant's testimony is not credible. I find that the evidence fails to establish that there is a serious possibility that he would face persecution by the DSSS over an allegation of his association with IPOB. I also find, on a balance of probabilities, that none of the Appellants would personally face a threat to their lives, the risk of being tortured or face cruel and unusual punishment at the hands of the Black Axe organization should they be returned to Nigeria.

[30] For these reasons, all five appeals are dismissed. (signed) "Philippe Rabot" Philippe Rabot February 6, 2020 Date 1 RPD-1, RPD record, exhibit 8, page 178. 2 Ibid, RPD's decision, pages 3 to 10. 3 P-2, Appeal Record, Appellants'Memorandum, pages 98 to 112. 4 RPD-1, RPD record, Exhibit 7, National Documentation Package -Nigeria, Tab 7.24, The Black Axe confraternity, also known as the Neo-Black Movement of Africa, including their rituals, oaths of secrecy, and use of symbols or particular signs; whether they use force to recruit individuals (2009-November 2012), Immigration and Refugee Board of Canada, NGA104208.E, 3 December 2012. 5 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93. 6 Rozas Del Solar v. Canada (Citizenship and Immigration), 2018 FC 1145. 7 Immigration and Refugee Protection Act, subsection 110(4). 8 Minister of Citizenship and Immigration v. Singh, 2016 FCA 96. 9 Supra, note 1, , exhibit 13, page 184. 10 Ibid., exhibit 1, page 169.

RAD Files / Dossiers de la SAR : TB9-11170 TB9-11171 / TB9-11172 / TB9-11173 TB9-11174
RAD.25.02 (April 04, 2019) Disponible en français 10 Immigration and Refugee Board of Canada
Refugee Appeal Division Commission de l'immigration et du statut de réfugié du Canada Section
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